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(b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

[50 FR 39092, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986, as amended at 57 FR 33257, July 27, 1992]

Subpart B—Project Development and Operation

§ 884.212 Project completion.

(a) *FmHA certifications upon completion.* Upon completion of the project, FmHA shall inspect the project and, if determined to be acceptable, submit to the HUD field office the following certifications:

(1) The project has been completed in accordance with the requirements of the Agreement;

(2) The project is in good and tenantable condition;

(3) There are no defects or deficiencies in the project other than punchlist items, or incomplete work awaiting seasonal opportunity;

(4) There has been no change in management capability.

(b) *HUD review.* HUD shall promptly review the certifications submitted pursuant to paragraphs (a) and (b) of this section (see § 884.203(b)).

(c) *HUD acceptance.* If HUD determines from the review that the certifications are acceptable in accordance with these subparts, the project shall be accepted.

(d) *Acceptance where defects or deficiencies reported.* If the only defects or deficiencies are punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the Contract executed. If the Owner fails to complete the items within a reasonable time to the satisfaction of HUD (and the PHA, if applicable), HUD may, after consultation with FmHA, upon 30 days notice to the Owner (and the PHA, if applicable), terminate the Contract and/or exercise its other rights thereunder or, if the Contract is with a PHA, cancel its approval of the Contract and require its termination and/or exercise its other rights under the Contract and the ACC.

(e) *Arbitration.* In the event the Owner disputes HUD determinations,

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he may submit the controversy to third-party arbitration at his expense, provided that the arbitration is advisory only.

(f) *Completion in stages.* If the project is to be completed in stages, the procedures of this section shall apply to each stage.

§ 884.213 Execution of housing assistance payments contract.

(a) *Time of execution.* Upon acceptance of the project by HUD pursuant to § 884.212, the Contract shall be executed first by the Owner and then by HUD, or, in the case of a Private-Owner/PHA Project, executed by the Owner and the PHA and then approved by HUD.

(b) *Unleased units.* At the time of execution of the Contract, HUD (or the PHA, as appropriate) shall examine the lists of dwelling units leased and not leased, referred to in § 884.211(e) and shall determine whether or not the Owner has met his obligations under that section with respect to any unleased units. HUD (or the PHA, as appropriate) shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments. The Owner shall indicate in writing his concurrence with this determination or his disagreement, reserving his rights to claim housing assistance payments for the unleased units pursuant to the Contract, without prejudice by reason of his signing the Contract. Copies of all documents referred to this paragraph shall be furnished to HUD in the case of a Private-Owner/PHA Project.

§ 884.214 Marketing.

(a) *Compliance with equal opportunity requirements.* Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's FmHA-approved Affirmative Fair Housing Marketing Plan, if required, and with all regulations relating to fair housing advertising including use of the equal opportunity logotype statement and slogan in all advertising. Projects shall be managed and operated without regard to race, color, creed, religion, sex, or national origin.

(b) *Eligibility, selection and admission of families.* (1) The owner is responsible

for determination of eligibility of applicants in accordance with the procedure of 24 CFR part 5, selection of families from among those determined to be eligible (including provision of Federal selection preferences in accordance with 24 CFR part 5), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with schedules and criteria established by HUD.

(2) For every family that applies for admission, the owner and the applicant will complete and sign the form of application prescribed by HUD. However, if there are no vacant units and the owner's waiting list is such that there would be an unreasonable length of time before the applicant could be admitted, the owner may advise the applicant that the owner is not accepting applications for that reason.

The owner must retain copies of all completed applications together with any related correspondence for three years. For each family selected for admission, the owner must submit one copy of the completed and signed application to the HUD field office (in the case of private-owner/PHA projects, the owner simultaneously must send a copy of the form to the PHA). Housing assistance payments will not be made on behalf of an admitted family unit after this copy has been received by the HUD field office (or, in the case of private-owner/PHA projects, until the copy has been received by the PHA with a certification by the owner that the owner has sent a copy to HUD).

(3) If the Owner determines that the applicant is eligible on the basis of Income and family composition and is otherwise acceptable but the Owner does not have a suitable unit to offer, the Owner shall place such Family on his waiting list and so advise the Family.

(4) If the Owner determines that the applicant is eligible on the basis of Income and family composition and is otherwise acceptable and if the Owner has a suitable unit, the Owner and the Family shall enter into a Lease. Such Lease shall be on the form of Lease included in the Owner's approved Final Proposal and shall otherwise be in con-

formity with the provisions of this part.

(5) Records on applicant families and approved Families shall be maintained by the Owner so as to provide HUD with racial, ethnic and gender data and shall be retained by the Owner for three years.

(6) In the case of a PHA-Owner project, (i) if the PHA places a Family on its waiting list, it shall notify the Family of the approximate date of availability of a suitable unit insofar as such date can be reasonably determined, and (ii) if the PHA determines that an applicant is ineligible on the basis of income or family composition, or that the PHA is not selecting the applicant for other reasons, the PHA shall promptly send the applicant a letter notifying him of the determination and the reasons and that the applicant has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines that the applicant shall not be admitted, the PHA shall so notify the applicant in writing and such notice shall inform the applicant that he has the right to request a review by HUD of the PHA's determination. The procedures of this subparagraph do not preclude the applicant from exercising his other rights if he believes he is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The PHA shall retain for three years a copy of the application, the letter, the applicant's response if any, the record of any informal hearing, and a statement of final disposition.

(7) See 24 CFR part 5 for the informal review provisions for the denial of a Federal selection preference.

(8) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see part 5 of this title for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration

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status, and those without eligible immigration status) in lieu of denial of assistance.

[41 FR 47168, Oct. 27, 1976. Redesignated at 45 FR 6909, Jan. 30, 1980, and amended at 53 FR 1162, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 60 FR 14845, Mar. 20, 1995; 61 FR 9047, Mar. 6, 1996; 61 FR 13594, Mar. 27, 1996; 65 FR 16723, Mar. 29, 2000]

§ 884.215 Lease requirements.

The Lease shall contain all required provisions specified in paragraph (b) of this section and none of the prohibited provisions listed in paragraph (c) of this section.

(a) *Term of lease.* The term of the Lease shall be for not less than one year. The Lease may (or, in the case of a Lease for a term of more than one year, shall) contain a provision permitting termination upon 30 days advance written notice by either party.

(b) *Required provisions.* The Lease between the Owner (Lessor) and the Family (Lessee) shall contain the following provisions:

ADDENDUM TO LEASE

The following additional Lease provisions are incorporated in full in the Lease between _____ (Lessor) and _____ (Lessee) for the following dwelling unit: _____. In case of any conflict between these and any other provisions of the Lease, these provisions shall prevail.

a. The total rent shall be \$ _____ per month.

b. Of the total rent, \$ _____ shall be payable by or at the direction of the Department of Housing and Urban Development ("HUD") as housing assistance payments on behalf of the Lessee and \$ _____ shall be payable by the Lessee. These amounts shall be subject to change by reason of changes in the Lessee's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment by HUD, or the PHA, if appropriate, of any applicable Allowance for Utilities and Other Services. Any such change shall be effective as of the date stated in a notification to the Lessee.

c. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

d. The Lessor shall provide the following services and maintenance:

Lessor _____

By _____
Date _____
Lessee _____
Date _____

(c) *Prohibited provisions.* Lease clauses which fall within the classifications listed below shall not be included in any Lease.

(1) *Confession of judgment.* Prior consent by tenant to any lawsuit the landlord may bring against him in connection with the Lease and to a judgment in favor of the landlord.

(2) *Distraint for rent or other charges.* Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

(3) *Exculpatory clause.* Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

(4) *Waiver of legal notice to tenant prior to actions for eviction or money judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

(5) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

(6) *Waiver of jury trial.* Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

(7) *Waiver of right to appeal judicial error in legal proceedings.* Authorization to the landlord's lawyer to waive the tenant's right to appeal on the ground of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

(8) *Tenant chargeable with costs of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant.